

1 ORRICK, HERRINGTON & SUTCLIFFE LLP  
KAREN G. JOHNSON-MCKEWAN (SBN 121570)  
2 kjohnson-mckewan@orrick.com  
ANNETTE L. HURST (SBN 148738)  
3 ahurst@orrick.com  
GABRIEL M. RAMSEY (SBN 209218)  
4 gramsey@orrick.com  
405 Howard Street, San Francisco, CA 94105  
5 Tel: 1.415.773.5700 / Fax: 1.415.773.5759  
PETER A. BICKS (*pro hac vice*)  
6 pbicks@orrick.com  
LISA T. SIMPSON (*pro hac vice*)  
7 lsimpson@orrick.com  
51 West 52<sup>nd</sup> Street, New York, NY 10019  
8 Tel: 1.212.506.5000 / Fax: 1.212.506.5151

9 BOIES, SCHILLER & FLEXNER LLP  
DAVID BOIES (*pro hac vice*)  
10 dboies@bsfllp.com  
333 Main Street, Armonk, NY 10504  
11 Tel: 1.914.749.8200 / Fax: 1.914.749.8300  
STEVEN C. HOLTZMAN (SBN 144177)  
12 sholtzman@bsfllp.com  
1999 Harrison St., Ste. 900, Oakland, CA 94612  
13 Tel: 1.510.874.1000 / Fax: 1.510.874.1460

14 ORACLE CORPORATION  
DORIAN DALEY (SBN 129049)  
dorian.daley@oracle.com  
15 DEBORAH K. MILLER (SBN 95527)  
deborah.miller@oracle.com  
16 MATTHEW M. SARBORARIA (SBN 211600)  
matthew.sarboraria@oracle.com  
17 RUCHIKA AGRAWAL (SBN 246058)  
ruchika.agrawal@oracle.com  
18 500 Oracle Parkway,  
Redwood City, CA 94065  
19 Tel: 650.506.5200 / Fax: 650.506.7117

20 *Attorneys for Plaintiff*  
ORACLE AMERICA, INC.

21 UNITED STATES DISTRICT COURT  
22 NORTHERN DISTRICT OF CALIFORNIA  
23 SAN FRANCISCO DIVISION

24 ORACLE AMERICA, INC.

25 Plaintiff,

26 v.

27 GOOGLE INC.

28 Defendant.

Case No. CV 10-03561 WHA

**ORACLE'S RECOMMENDED  
RESPONSES TO THE MAY 24 JURY  
QUESTIONS**

Dept.: Courtroom 8, 19th Floor  
Judge: Honorable William Alsup

Oracle recommends the following responses to the jury's May 24, 2016 questions.

**I. Jurors May Take Their Notes Home**

The jury first asked: "Can jurors take their handwritten notes, notepads, home with them each night?" Tr. 2251:11-12.

Oracle recommends that the Court tell the jurors they may take their notes home. Indeed, the parties already agreed to allow the jurors to take their notes home over the weekend before closing arguments.

**II. Jurors May Examine Exhibits Without Everyone Present**

The jury next asked: "Can the jurors review trial exhibits on their own if they arrive early or want to stay late?" Tr. 2252:23-24.

Oracle recommends that the Court tell the jurors that they may examine the exhibits without everyone present but recommends that the Court first repeat its admonition that jurors cannot deliberate without all jurors present. That said, if the concern is that only one juror can read a given exhibit at a time, the parties could provide extra copies of the exhibits, so multiple jurors can independently look at the same exhibit if they wish. If there are additional copies of the exhibits, members of the jury would have less need to arrive early or stay late to read documents they possibly could not review during deliberations because other jurors were reviewing the document.

**III. Jurors May Take The Jury Instructions Home**

Finally, the jury asked: "[Can the jurors] [t]ake the jury instructions home with them each night?" Tr. 2253:18-19.

Oracle recommends that the Court tell the members of the jury that they may take the jury instructions home. However, Oracle would like to make the Court aware of authority stating that "[a]llowing the jury to take home the indictment or the jury instructions leaves the deliberative process needlessly vulnerable to a variety of potential problems by increasing the chances that individual jurors may want to discuss these matters with family members or friends and by making it easier for jurors to research legal issues on their own." *United States v. McGill*, 815 F.3d 846, 872 (D.C. Cir. 2016) (quotation marks omitted); *United States v. Esso*, 684 F.3d 347,

1 354 (2d Cir. 2012).

2 Accordingly, if the Court tells the jurors that they may take the jury instructions and their  
3 notes home, Oracle recommends that the Court instruct the jury that no one else may see any  
4 materials related to the case. Oracle also recommends that the Court once again remind the jury  
5 that they may not discuss the case with anybody or conduct any outside research.

6 Dated: May 24, 2016

Respectfully submitted,

Orrick, Herrington & Sutcliffe LLP

By: /s/ Peter A. Bicks  
Peter A. Bicks

Counsel for ORACLE AMERICA, INC.